To: Snohomish County Council

From: Tom McCormick

Date: September 7, 2018

Re: OHWM Misrepresentations — Memorandum Opposing BSRE's Appeal

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The Hearing Examiner concluded that BSRE's failure to determine the area in which one can lawfully build at Point Wells is a "failure of diligence" at the least and "dilatory" at the most.[1] For seven years, BSRE failed to determine the ordinary high water mark (OHWM) at Point Wells, and failed to determine the correct shoreline setbacks (shoreline buffers). Many buildings that BSRE represented on its 2011, 2017, and 2018 site plans as being outside the shoreline buffers are not.

I respectfully request that you affirm the Hearing Examiner's denial of BSRE's applications, but **with prejudice**.

As this Memorandum reveals, BSRE's conduct, including intentional misrepresentations and an extreme lack of diligence, has been far worse than dilatory—conduct which the Hearing Examiner was not aware of when he decided to deny BSRE's applications without prejudice.[2]

I. Determining the Ordinary High Water Mark (OHWM)

You cannot build too close to Puget Sound. You cannot build too close to the OHWM one finds by examining the shoreline and locating its line of persistent vegetation.[3] As defined in SCC 30.91O.030 [last amended 2007],[4] the OHWM on tidal waters like Puget Sound is:

> the mark that will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued

[1] "A glaring example of BSRE's failure to prosecute its applications diligently is its failure to ascertain the ordinary high water mark until late spring 2018. … BSRE made no effort to ascertain the ordinary high water mark until March 2018. … Waiting seven years to determine the area in which one can lawfully build is a failure of diligence at the least and dilatory at the most." Conclusions C.13, C.16, and C.17 of Hearing Examiner's August 3, 2018, Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement [Exhibit R-4].

[2] The public was not given an opportunity to submit comments on BSRE's Motion for Reconsideration in which BSRE requested a "without prejudice" ruling.

[3] "The line of persistent vegetation is the principal OHWM indicator …." [Department of Ecology's report, "Determining the Ordinary High Water Mark for Shoreline Management Act Compliance in Washington State," originally published in 2010, and revised October 2016 (Publication No. 16-06-029), at page 6. This Report, referred to during testimony of Gray Rand and Jack Molver on May 23, 2018, is hereafter called "Ecology's 2016 OHWM Report."] If no vegetation is found on beaches with bulkheads or seawalls, the OHWM is usually at the face of the bulkhead or seawall. [Ecology's 2016 OHWM Report, at page 85.]

[4] The OHWM is similarly defined in: the Snohomish County Shoreline Management Master Program, page J-8 (1993); SCC 30.44.640; RCW 90.58.030(2)(c); and WAC 173-22-030(5) and 173-22-040(1).

> in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, with respect to vegetation. [For tidal waters] in high energy environments where the action of waves or currents is sufficient to prevent vegetation establishment below mean higher high tide, the ordinary high water mark is coincident with the line of vegetation. Where there is no vegetative cover for less than one hundred feet parallel to the shoreline, the ordinary high water mark is the average tidal elevation of the adjacent lines of vegetation. Where the ordinary high water mark cannot be found, it is the elevation of mean higher high tide. [underlining added for emphasis]

SCC 30.91O.030 requires that a field investigation be conducted to determine the OHWM. Field indicators of the OHWM, such as a persistent line of vegetation, can almost always be found during a field investigation.[5] The OHWM found in the field is always located above the the elevation of mean higher high tide, also called mean higher high water (MHHW).[6]

Below is a photo taken by a Department of Ecology representative on June 26, 2018, that I received pursuant to a public records request. Notice the vegetation, and three stakes identifying the OHWM at the southern portion of Point Wells (I added the circles).

[5] "Except in those very rare cases where field indicators cannot be found, OHWM determinations should be based on a site-specific investigation." [Ecology's 2016 OHWM Report, at page 5.]

[6] "OHWM is a mark on the soil (geomorphic) with respect to vegetation (biologic) and is always found above MHHW." Ecology's 2016 OHWM Report, at page 71.

The MHHW is the "tidal elevation obtained by averaging each day's highest tide at a particular location over a period of 19 years."[7] You use published tidal tables to find the MHHW for a particular location. The MHHW at Seattle is 9.02 feet, at Edmonds it is 8.85 feet, and at Point Wells it is 8.84 feet.[8] You can easily plot the MHHW line on a site's topographical survey. For example, if a site's survey has 8-foot and 10-foot contour lines, and the MHHW at the site has an elevation of 9 feet, then by extrapolation the MHHW line is half-way between the 8-foot and 10-foot contour lines.

In those very rare cases where field indicators of the OHWM (such as a persistent line of vegetation) cannot be found, then the OHWM is "the elevation of mean higher high tide"—aka MHHW. SCC 30.91O.030.

II. Site Constraints Imposed by the 150-foot Marine Buffer and 200-foot Shoreline Management Act Buffer, both Measured from the OHWM

Buildings are not allowed to be located within a 150-foot marine buffer measured from the OHWM.[9]

And buildings located between the 150-foot buffer and the 200-foot Shoreline Management Act buffer cannot be taller than 35 feet.[10]

County Code requires that developers depict the OHWM and the shoreline buffers on the project site plans.[11]

III. BSRE Failed to Perform a Field Investigation to Find the OHWM.

Though simple to do, BSRE failed to conduct a field investigation to find the OHWM prior to submitting its site plans to PDS in 2011 and resubmitting them later. As the Hearing Examiner concluded,

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[7] Ecology's 2016 OHWM Report, at page 207.

[8] Exhibit C-25, Table 3-1.

[9] SCC 30.62A.320(1)(a)(Table 2a) and (1)(b) [2010 version].

[10] RCW 90.58.320 [last amended 1971] and 98.58.030(d) [2010 version].

[11] See, for example, SCC 30.44.210(8)(c) [2010 version]; SCC 30.34A.170(3)(b)(iv) [2010 version]; SCC 30.62A.140(6)(f) and (g) [2010 version]; SCC 30.62A.140(6) [2010 version]; and SCC 30.62A.160(1)(a) and (1)(b)(iii) [2010 version]. Note: This Memorandum often refers to the 150-foot marine buffer and the 200-foot Shoreline Management Act buffer as, collectively, the "the shoreline buffers."

> "BSRE made no effort to ascertain the ordinary high water mark until March 2018.[12] … A glaring example of BSRE's failure to prosecute its applications diligently is its failure to ascertain the ordinary high water mark ...."[13]

Since 2011, instead of doing a field investigation, BSRE wrongfully used the MHHW line[14] as a proxy for the OHWM, thereby violating County Code year after year.[15] What BSRE calls the OHWM on its site plans[16] is actually the MHHW line—not the OHWM that is found during a field investigation. On the southern portion of the site, the difference between the MHHW and the OHWM that BSRE located in March 2018 is huge—the OHWM is over 50 feet farther landward at spots.

Due to the presence of vegetation at Point Wells, the OHWM is easy to find (see the photo on page 2 above). Since at least 2010, BSRE has known that there is vegetation on large portions of the shoreline.[17]

Because BSRE knew that County Code required the OHWM to be determined via a field investigation, and knew that there was vegetation on the shoreline, BSRE's failure to have conducted a field investigation to determine the OHWM is inexcusable—even more so because its consultant had performed a field investigation elsewhere on the site to determine the OHWM of streams on the site.[18] BSRE's consultant searched for the OHWM of the

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[12] Conclusion C.16 of Hearing Examiner's August 3, 2018, Amended Decision Denying Extension and Denying Applications Without Environmental Impact Statement [Exhibit R-4]. BSRE does not contest that it made no effort to ascertain the ordinary high water mark until March 2018; see BSRE's Appeal of Hearing Examiner's Amended Decision [Exhibit S-1, at page 8], not contesting Conclusion C.16.

[13] Conclusion C.13, Exhibit R-4.

[14] See Section I. above for a discussion of the MHHW line.

[15] The MHHW line is only permitted to be used in the very rare cases where, after conducting the required field investigation, field indicators of the OHWM (such as a persistent line of vegetation) cannot be found.

[16] See, for example, Sheet A-051 (Overall Site Plan Constraints), of BSRE's 2011 and 2017 site plans [Exhibits B-2 and B-1]. BSRE uses the acronyms OHWL ("L" for line) and OHWM in its site plans and other materials interchangeably.

[17] As stated in BSRE's 2011 Critical Areas Report [Exhibit M-37, page 37], "A reconnaissance level survey of the nearshore marine environment was conducted by DEA [(BSRE's consultant)] on February 1, 2010. … Photos taken during this and other site visits are included in Appendix B." Photos 6, 7, and 13 in Appendix show the presence of vegetation on the site's southern and central shorelines. And see the Department of Ecology's 1993 aerial photo of Point Wells, reproduced in BSRE's January 2011 Critical Areas Report showing vegetation at the southern end of the site.

[18] BSRE's consultant "performed site visits on October 13 and November 23, 2009, and February 1, 2010, to … flag stream ordinary high water marks (OHWM)." Exhibit M-37, page 17.

streams on the site as required by SCC 30.91O.030,[19] but the consultant failed to search for the OHWM along the shoreline as required also by SCC 30.91O.030.

IV. When PDS asked BSRE about the OHWM in 2013, BSRE should have Investigated the Issue, then Visited the Site to Find the OHWM, then Corrected its Site Plans to Depict Two Separate Lines on each Sheet (an OHWM and a MHHW line) — BSRE Failed To Do So.

In 2013, PDS alerted BSRE that there might be an issue with BSRE's depiction of the OHWM, asking BSRE whether the line it depicted as the OHWL on some of its site plans represented the same line as the MHHW line depicted elsewhere.[20] In response, BSRE should have investigated the issue. Exercising diligence, BSRE would have realized that it needed to perform a field investigation to determine the OHWM. With lines of vegetation along large portions of the shoreline, BSRE would have easily found the OHWM. BSRE would have realized that its use of the MHHW line was an unlawful proxy for the OHWM. BSRE would then have corrected its site plans to depict two separate lines (an OHWM and a MHHW line), but it failed to do so.

In 2017, BSRE revised and resubmitted its site plans and other materials.[21] Even after PDS had questioned BSRE in 2013 about the OHWM vs MHHW issue, BSRE failed to correct its site plans in 2017 to depict separate and distinct lines for the OHWM and MHHW.

Except one thing did change. BSRE's Critical Areas Report was revised in 2017 to represent that, "The OHWM for the shoreline of Puget Sound ***was determined*** based on WAC 173-22-030."[22] [***italics*** added for emphasis] The referenced section, WAC 173-22-030 at subsection (5), requires that a field investigation be conducted to find the OHWM, just as SCC 30.91O.030 does, and it says that only when the OHWM cannot be found, can the MHHW line be used as its proxy.

Given that BSRE did not revise its site plans in 2017 to depict separate OHWM and MHHW lines, by stating in its 2017 Critical Areas Report that the OHWM for the shoreline *was determined* based on WAC 173-22-030, BSRE was in effect (mis)representing that a field

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[19] SCC 30.91O.030(3)— "Streams. Where the ordinary high water mark cannot be found, it shall be the line of mean high water. For braided streams, the ordinary high water mark is found on the banks forming the outer limits of the depression within which the braiding occurs."

[20] Exhibit K-4 (PDS's Review Completion Letter, April 12, 2013), at page 3: "Sheets A-050 and 051 indicate location of an Ordinary High Water Line along the shoreline. Sheets C-201 – 203 indicate location of a Line Mean Higher High Water along the shoreline. Do these terms represent the … same line?"

[21] Exhibit B-1.

[22] BSRE's 2017 Critical Areas Report states, in Section 4.3 — Field Investigation: "The OHWM for the shoreline of Puget Sound was determined based on WAC 173-22-030. The code indicates that jurisdictional limits for tidal waters are defined as follows: In high energy environments … the OHWM is coincident with the line of vegetation. … Where the OHWM cannot be found, it is the elevation of MHHW tide level [(aka the MHHW)]." Exhibit C-15, page 32.

investigation was performed, that an OHWM could not be found, and that therefore the MHHW line could appropriately be used as its proxy. BSRE made no effort to ascertain the ordinary high water mark until March 2018.[23]

V. When in 2017 PDS again asked BSRE about the OHWM, BSRE should have Investigated the Issue, then Visited the Site to Find the OHWM, then Corrected its Site Plans to Depict Two Separate Lines on each Sheet (an OHWM and a MHHW line) — BSRE Failed To Do So, and Worse

After reviewing the revised site plans that BSRE resubmitted on April 17, 2017,[24] PDS once again alerted BSRE that there might be an issue with its depiction of the OHWM, asking (as it did in 2013) whether the line it depicted as the OHWL on some of its site plans represented the same line as the MHHW line depicted elsewhere.[25]

In response, BSRE should have investigated the issue. Exercising diligence, BSRE should have conducted a field investigation, and after locating the OHWM, it should have corrected its site plans to depict separate and distinct lines for the OHWM and MHHW. BSRE failed to do so, and worse.

In submitting its revised materials on April 27, 2018, BSRE told PDS that, "The Critical Area Study has been revised to make the use of the Ordinary High Water Line ("OHWM") and Mean Higher High Water ("MHHW") consistent. All figures and maps now refer to MHHW only."[26]

So instead of conducting a field investigation, locating the OHWM, and revising its site plans to depict separate and distinct lines for the OHWM and MHHW, BSRE revised its site plans to depict a MHHW line only, and depicted shoreline buffers that it measured from the MHHW line.[27] BSRE disingenuously did this despite knowing all of the following:

1. County Code requires that the OHWM be depicted on site plans.
2. County Code requires that shoreline buffers be measured from the OHWM and be depicted on site plans.

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[23] See Footnote 12 above, and accompanying text.

[24] Exhibit B-1.

[25] Exhibit K-31, page 24: "Sheets A-050 and 051 indicate location of an Ordinary High Water Line along the shoreline. Sheets C-201 – 203 indicate location of a Line Mean Higher High Water along the shoreline. Do these terms represent the … same line? … Second Request: A response is still required."

[26] Exhibit G-13, page 18.

[27] As part of its April 2018 revisions, BSRE also deleted from its 2018 Critical Areas Report the following statement that it had made in its 2017 Critical Areas Report: "The OHWM for the shoreline of Puget Sound *was determined* based on WAC 173-22-030." [*italics* added for emphasis.] As discussed earlier, like SCC 30.91O.030, WAC 173-22-030(5) requires a field investigation to find the OHWM, and it says that only when the OHWM cannot be found, can the MHHW line be used as its proxy.

3. County Code requires that a field investigation be conducted to determine the OHWM.
4. The line of vegetation is the principal OHWM indicator.
5. There is a line of vegetation along large portions of the Point Wells shoreline, and BSRE has always known this—the OHWM at Point Wells can easily be found in the field.
6. County Code provides that if the OHWM cannot be found during a field investigation, then, and only then, can the MHHW be used as a proxy for the OHWM.

To say that BSRE disingenuously revised its site plans in April 2018 is an understatement. As PDS discovered upon reviewing the site plans and other materials that BSRE submitted on April 27, 2018, there is one more thing that BSRE knew. One more critical thing to add to the above list:

7. BSRE knew that its consultant had conducted a field investigation and located the OHWM in March 2018.[28]

Knowing all of the above, BSRE intentionally misrepresented the shoreline buffers on its April 27, 2018 site plans. It depicted the MHHW line on its site plans as the line from which buffers were measured.

Aware that its consultant had located the OHWM in March 2018, BSRE had a legal and ethical duty to ensure that the site plans BSRE would eventually submit on April 27, 2018, would depict separate and distinct lines for the OHWM and MHHW, and depict the 150-foot and 200-foot shoreline buffers measured from the OHWM.

BSRE had a legal and ethical duty not to submit site plans that it knew were egregiously defective, and in violation of County Code. If BSRE felt it was running out of time and wanted to submit revised site plans even if the site plans were defective, then, at a minimum, BSRE had a legal and ethical duty to prepare and submit a document to PDS along with the defective site plans that would have advised PDS (1) that BSRE had performed a field investigation and located the OHWM at Point Wells subject to final verification by the Department of Ecology (2) that it would need time to fix the site plans to depict separate and distinct lines for the OHWM and MHHW, and depict the 150-foot and 200-foot shoreline buffers measured from the OHWM, (3) that some buildings would likely fall within the buffers and would need to be eliminated, and so on. BSRE could have submitted the defective site plans with such a document, and could have added markings on the site plans and hand-written notations advising PDS of the known defects that BSRE would be fixing.

But BSRE said nothing to PDS. BSRE instead proceeded to submit site plans that it knew were egregiously defective, and that it knew were in violation of County Code. BSRE stayed silent until getting caught by PDS.

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[28] Several sheets in BSRE's 64-page architectural plans, submitted April 27, 2018, depict an OHWM line separate and distinct from the MHHW line. See Sheets EX2, C-010, C-020, C-100, C-201, and C-301 [Exhibit B-7]. At the southern portion of the site, the depicted OHWM line is located about 50 feet farther landward than the MHHW line. The depicted OHWM line has this caption: "ORDINARY HIGH WATER MARK (OHWM) LOCATED BY DEA BIOLOGIST MARCH 2018."

VI. BSRE's Attempt to Blame PDS for BSRE's Failings is Absurd

While reviewing the site plans and other materials that BSRE submitted on April 27, 2018, PDS discovered notations saying that in March 2018 the OHWM had been located. And on some of BSRE's site plans, PDS discovered separate and distinct lines for the OHWM and MHHW, with the OHWM line located farther landward than the MHHW line.[29] PDS soon informed BSRE that, since BSRE had located the OHWM, BSRE's failure to use the OHWM as the basis for measuring the shoreline buffers was a substantial conflict with County Code.[30]

BSRE argues that it "did not fail to act diligently by not determining the OHWM earlier when the County failed to even raise this issue until [May 9, 2018]."[31]

BSRE made the same argument to the Hearing Examiner, who dismissed it:[32]

> "BSRE, not PDS, is responsible for designing a project that complies with County Code. BSRE effectively argues that it should be absolved of its failure to comply with County Code because PDS did not catch BSRE's failure sooner. BSRE is charged with knowledge of County Code; PDS's alleged failure to catch BSRE's mistake sooner is not material to the Hearing Examiner's decision."

In addition to what the Hearing Examiner said, we must remember, as discussed in Sections IV. and V. above, that PDS raised the OHWM issue twice before, in 2013 and again in 2017, asking BSRE if the OHWM and MHHW terms represented the same line.[33] Following such inquiry, BSRE and its team of land-use experts would have (if exercising diligence) realized that they needed to do a field investigation to determine the OHWM at Point Wells.

Over the years, BSRE has been less than honest. Many examples have been given, but this stands out: Prior to resubmitting its site plans in April 2018, though BSRE knew that its consultant had earlier located the OHWM during a field investigation, BSRE nonetheless

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[29] *Id.*

[30] On May 9, 2018, PDS issued its Supplemental Staff Recommendation, informing BSRE of its failings and the substantial Code conflicts. Exhibit N-2, pages 19 and 23.

[31] Exhibit S-1, at page 11.

[32] Hearing Examiner's August 3, 2018 Decision Granting in Part and Denying in Part BSRE's Motion for Reconsideration and Clarification, Exhibit R-3, at page 3.

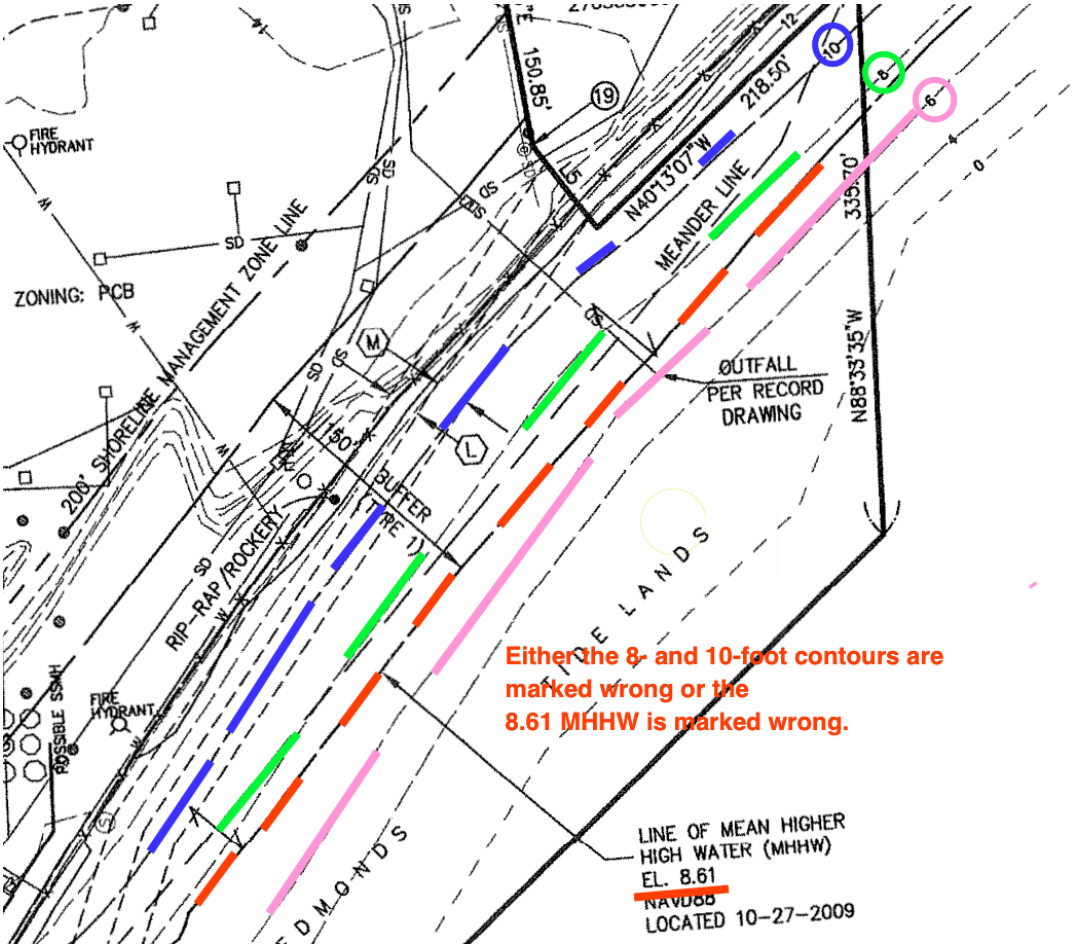
[33] Exhibit K-4 (PDS's Review Completion Letter, April 12, 2013), at page 3: "Sheets A-050 and 051 indicate location of an Ordinary High Water Line along the shoreline. Sheets C-201 – 203 indicate location of a Line Mean Higher High Water along the shoreline. Do these terms represent the … same line?" Exhibit K-31, page 24: "Sheets A-050 and 051 indicate location of an Ordinary High Water Line along the shoreline. Sheets C-201 – 203 indicate location of a Line Mean Higher High Water along the shoreline. Do these terms represent the … same line? … Second Request: A response is still required."

depicted the MHHW line on its site plans and illegally used the MHHW line as the line from which buffers were measured (see Section V. above).

VII. A Newly Discovered Lack of Diligence: BSRE's MHHW line is Wrongly Depicted—More than 30 Feet Off

Two weeks ago, while reviewing the hearing Exhibits, I discovered another example of BSRE's negligence and lack of diligence.

Below is a marked screenshot from Sheet EX2 of BSRE's 2011 site plans. Sheet EX2 is a survey of existing conditions. The screenshot is from the southern portion of the site.



Sheet EX2 notes that the MHHW elevation is 8.61 feet. The MHHW line (red) is depicted as being located between the 6-foot (pink) and 8-foot (green) contour lines. However, a MHHW line with an elevation of 8.61 feet should be located between the 8-foot (green) and 10-foot (blue) contour lines.

I estimate that if Sheet EX2 is corrected to relocate the 8.61-foot MHHW line to its correct position between the 8-foot and 10-foot contour lines, which I assume are correct, then the MHHW line would get moved landward about 30-50 feet at places in the southern portion of the site. The 150-foot and 200-foot setback lines (the shoreline buffers) that BSRE wrongfully measured from the MHHW line in its 2011, 2017, and 2018 site plans would also get moved landward about 30-50 feet.

Not only did BSRE wrongly use the MHHW line (instead of the OHWM determined by a field investigation) to measure the shoreline buffers in its 2011, 2017, and 2018 site plans, but it also wrongly positioned the MHHW line on its site plans by about 30-50 feet at places in the southern portion of the site. This is yet another example of BSRE's lack of diligence.

Maybe BSRE will try to blame PDS for this too?—perhaps arguing that it "did not fail to act diligently by not correctly positioning the MHHW on its site plans earlier, when PDS failed to raise the issue until now."

And here's one more example of carelessness: Sheet EX2 of BSRE's 2018 site plans [Exhibit B-7] depicts the MHHW elevation as being 8.84 feet, not 8.61 feet as depicted on the 2011 and 2017 site plans, and as depicted on five other sheets in BSRE's 2018 site plans. Is the MHHW 8.84 feet or 8.61 feet?

VIII. OHWM Likely Farther Landward than BSRE Contends, Increasing the Magnitude of Code Conflicts.

BSRE's Appeal of the Hearing Examiner's Decision mentions that BSRE's consultant met with representatives from the Department of Ecology at Point Wells on June 26, 2018,[34] seeking to have the Department of Ecology verify the consultant's OHWM determination.

Following the site visit, during which stakes were placed in the ground to identify the OHWM at various spots (see the photo at page 2 above taken by one of the Department of Ecology representatives), the consultant was supposed to have sent a report to the Department of Ecology, with details of GPS coordinates for the stakes, and other information and photos. As of today, about 2 1/2 months since the site visit, showing a complete lack of diligence, BSRE's consultant has yet to send a report to the Department of Ecology. Department representatives have advised me that once they receive the report, they will vet the report with County officials before issuing a final verification letter.

The line of stakes in the photo (identifying the OHWM) is quite close to the fence line on the southern portion of the site. The line of stakes is much closer to the fence than is the March 2018 OHWM line depicted on some of BSRE's site plans,[35] and much closer to the fence

[34] Exhibit S-1, at page 11.

[35] See Sheets EX2, C-010, C-020, C-100, C-201, and C-301 [Exhibit B-7].

than the OHWM line depicted by BSRE on the drawings attached as Addendum 8 to BSRE's Motion for Reconsideration.[36] It appears that the difference is 20-30 feet at spots.

Here is the significance: If the true OHWM is 20-30 feet farther landward at spots in the southern portion of the site, as compared to what the site plans and BSRE's drawings show, then the shoreline buffers are 20-30 feet farther landward too, causing one or two additional buildings to be located within the 150-foot marine buffer. That is, one or two buildings in addition to the four buildings that BSRE identified in its Addendum 8 that must be removed. Further, that extra 20-30 feet likely results in some parts of the parking garage being impermissibly located within the 150-foot buffer, and requiring redesign.

This all adds up to the substantial Code conflicts becoming even more substantial—far more than the 6.5% figure[37] that BSRE mentions in its Appeal.

IX. Conclusion

I respectfully request that you affirm the Hearing Examiner's denial of BSRE's applications, but **with prejudice**. BSRE's improper conduct and lack of diligence deserves nothing less.

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Note regarding the 90-foot building height limit: BSRE appeals the Hearing Examiner's conclusion that its 21 proposed buildings in excess of 90 feet substantially conflict with SCC 30.34A.040(1). The arguments BSRE makes in its appeal are not new. For my response to BSRE's arguments, please see Exhibit I-392 (my May 15, 2018, Pre-Hearing Memorandum), and Exhibit Q-9 (my June 1, 2018, Post-Hearing Memorandum).

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[36] See Addendum 8 to BSRE's Motion for Reconsideration [Exhibit R-1], showing that if the OHWM is located where its consultant thought it was located (prior to the June 26, 2018 site visit with the Department of Ecology), then four of the buildings previously outside the 150-foot buffer would be within the buffer and must be removed, and another two buildings (shaded red) would be within the 200-foot Shoreline Management Act buffer and must be reduced in height to 35 feet.

[37] Exhibit S-1, at page 10.